

J. M. TUASON & CO., INC., REPRESENTED BY ITS MANAGING PARTNER, THE GREGORIO ARANETA, INC., PLAINTIFF AND APPELLEE, VS. DANNY VIBAT, DEFENDANT AND APPELLANT.

G.R. No. L-18884. May 29, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order denying a petition for relief from judgment.

On January 7, 1959, a plenary action (publiciana) for ejectment and collection of rentals was filed by plaintiff J. M. Tuason & Co., Inc., in the Court of First Instance of Rizal against appellant Vibat on the basis of plaintiff's registered title to a parcel of land known as the Santa Mesa Heights Subdivision situated at Quezon City covered by Transfer Certificate of Title No. 1267 (37686-Rizal). The complaint avers that on or about June, 1950 the defendant, without and against plaintiff's consent, through force, strategy, and stealth, unlawfully entered into the possession of a portion of 500 square meters, more or less, within said parcel of land of the plaintiff situated at Bo. North Tatalon, Quezon City, and constructed his house thereon; and that as a consequence of the acts of usurpation committed by the defendant the plaintiff suffered damages at the rate of P150 monthly representing the fair rental value of its premises, and prayed that defendant be adjudged to be without any valid right of possession and title in plaintiff's premises, that defendant and all persons claiming under him be ordered to vacate the same and remove his house and other construction thereon, and to pay P150 a month from the date of usurpation until restoration of possession, with costs.

Summons appears served on April 13, 1959 upon the defendant, through one Candido Calon.

The Court of First Instance of Rizal, on May 16, 1959, declared defendant in default for failure to file any responsive pleading within the reglementary period, and as a consequence, plaintiff was allowed to present his evidence in support of the complaint. Thereafter, upon presentation of plaintiff's evidence, finding the allegations of the complaint sufficiently established, the court rendered judgment, on June 3, 1959, in favor of plaintiff.

On June 23, 1959, defendant (now appellant) filed a petition for relief from this judgment of the trial court, alleging that his failure to file a responsive pleading was due to no fault, or negligence, of his; that Candido Calon, the person who, according to the Sheriff's return, received the copy of the summons and a copy of the complaint, was not, and never has been, residing at 39 B.M.A. Avenue, Tatalon, Quezon City, herein defendant's residence; that Calon was only a visitor who happened to be in the yard of his residence when the Deputy Sheriff persuaded him to receive said summons; that defendant Danny Vibat and his family were in Calamba, Laguna, on April 13, 1959 when said summons was received by Candido Calon, and that it was only several days after their arrival on May 10, 1959 that Calon delivered to him the copy of the summons with a copy of the complaint; that it was only on June 5, 1959 that he learned that he was declared in default; and that he has good and valid defenses to the plaintiff's complaint if given a chance to be heard. Sworn affidavits of the defendant and Calon were attached to this petition, which prayed that the order of default be set aside, and that defendant be allowed to file a

responsive pleading to the complaint.

Plaintiff, opposing this pleading, alleged that defendant's petition is not sufficient in form to justify the issuance of an order requiring to answer because he relied only upon an alleged purchase of the property in question from one E. Alquiros as his defense, whereas plaintiff is indubitably the registered owner of the property in question by virtue of a Torrens title issued in its name; that even assuming the truth of defendant's allegations that he purchased the property in question from E. Alquiros, such fact could not offset plaintiff's right to recover possession of the property as it is the registered and indefeasible owner thereof; and that the affidavits executed by defendant and Calon are purely self-serving, and should not be countenanced by this Court; and prayed for the summary dismissal of the petition.

On the date requested by defendant-petitioner for hearing, the court dictated an order in open court denying the petition, "for the same has failed to comply with mandatory requirements laid down by the provisions of Rule 38 of the Rules of Court". Thereafter, the defendant appealed to the Court of Appeals, which certified the case to this Court on the ground that only questions of law are involved.

We find no error in the denial of the petition for relief, because the record shows that appellant did not act with due diligence, and that he has no meritorious defense.

Even granting that Candido Calon was not qualified to accept service of summons, the fact is admitted by him and by the appellant (in their affidavits in support of the motion for relief) that Calon did turn over the summons to this appellant only "several days" after May 10, 1959. Had appellant Vibat acted with due diligence, and made prompt inquiries, he would have discovered that he had been declared in default on May 16, 1959, and could have asked for its lifting well before the rendition of the judgment on the merits on June 3, 1959.

As to the alleged defense that appellant Vibat had bought the land occupied by him from Eustaquio Alquiros, who, in turn, purchased it from Juliana (Juana) de la Cruz, the same plainly can not hold against the Torrens title admittedly issued in favor of plaintiff J. M. Tuason & Co., Inc., since the Torrens title concludes all controversy over ownership of the land covered by the final decree of registration, nor can title by adverse possession be acquired against the registered owner (Act 496, section 46). Appellant's remedy, if any, would only lie against his immediate vendor, on the latter's warranty against eviction.

WHEREFORE, the denial of the petition for relief is hereby affirmed, with costs against appellant Danny Vibat.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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